

### **REMARKS/ARGUMENTS**

Reconsideration of the application is requested.

Claims 1-16, 18-30, and 36-65 remain in the application. None of the claims have been amended.

The repeated art rejections and the newly added combination rejection have been noted. All of the rejections include the newly cited reference Mercuri (U.S. Patent No. 6,517,964 B2). Mercuri has an effective date, as a prior art reference, of November 30, 2000. 35 U.S.C. § 102(e). The instant application is based on a German application, and claims the priority therefrom under 35 U.S.C. § 119, of December 7, 2000. The Mercuri reference, therefore, predates applicants' priority date by a mere seven days.

The invention upon which the instant application is based was completed prior to November 30, 2000 in a WTO country, namely, Germany. Enclosed herewith is a declaration under 37 CFR § 1.131, which swears behind the effective date of Mercuri. The declaration is accompanied by several appendices (numbered App. 1 – App. 6). Much of the accompanying information is in the English language. The German text has not be translated because the essence of the evidence is entirely clear without translation. Further, the Examiner is requested to assume that all statements and averments made in the declaration are indeed true. The inventors have been warned under 18 U.S.C. § 1001.

Reference is further had, in this context, to Morrison v. Lakes, 63 USPQ2d 1742 (Patent Off. Bd. of App. 2002), which provides a variety of exemplary guidelines concerning reasonable delays in the context of a swear-back situation. There, a time period of about three months is considered reasonable for preparing a patent application. Id. at 1745.

Here, applicants' priority over Mercuri may be shown in two different ways: We can show a completion of the invention prior to November 30, 2000 and "excuse" the 7-day delay in filing (Nov. 30 – Dec. 7, 2000) as the time period necessary for preparing the patent application which was filed in the German Patent Office. In the alternative, we show that the invention was conceived well before Nov. 30, 2000, and that applicants diligently worked towards the constructive reduction to practice, which occurred on December 7, 2000. That is, the preparation of the patent application is included in the showing of diligence.

The secondary reference Mercuri is not available as a prior art reference against the instant application.

Should any questions remain, the Examiner is respectfully urged to telephone counsel so that the matter may be discussed.

Petition for extension is herewith made. The extension fee for response within a period of one month pursuant to Section 1.136(a) in the amount of \$120.00 in accordance with Section 1.17 is enclosed herewith.

Please charge any other fees which might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner and Greenberg, P.A., No. 12-1099.

In view of the foregoing, reconsideration and allowance of claims 1-16, 18-30, and 36-65 are solicited.

Respectfully submitted,



For Applicant(s)

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